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8 Attorneys for Plaintiffs
ELASTICSEARCH, INC. and
ELASTICSEARCH B.V.
9

10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **OAKLAND DIVISION**

13 ELASTICSEARCH, INC., a Delaware
14 corporation, and ELASTICSEARCH B.V., a
Dutch corporation,

15 Plaintiffs,

16 v.

17 FLORAGUNN GmbH, a German corporation,

18 Defendant.
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Case No. 4:19-cv-05553-YGR

**PLAINTIFFS ELASTICSEARCH, INC.
AND ELASTICSEARCH B.V.'S
NOTICE OF RULE 30(b)(6)
DEPOSITION OF DEFENDANT
FLORAGUNN GMBH**

Date: March 2, 2021
Time: 7:00 a.m. Pacific Time
Location: Videoconference

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN that, pursuant to Federal Rule of Civil Procedure 30(b)(6), Plaintiffs will take the deposition upon oral examination of a witness or witnesses to be designated by Defendant floragunn GmbH on March 2, 2021 at 7:00 a.m. Pacific Time, until completed with respect to topics set forth below. Plaintiffs reserve the right to seek relief from the court in the event that the designated deponent is not properly prepared to testify on behalf of Defendant with respect to each of the identified topics.

In accordance with California and San Francisco County Orders regarding the COVID-19 State of Disaster (<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/limited-stay-at-home-order.aspx>; <https://www.sfdph.org/dph/alerts/files/C19-07-Shelter-in-Place-Health-Order.pdf>), and/or any related orders in place on the deposition date, this deposition will be taken via remote video conference. Prior to the deposition, the deponent and counsel for the parties will be sent invitations containing a hyperlink to participate in the deposition. The deposition will be taken before an officer authorized by the State of California to administer the oath to Plaintiff.

NOTICE IS FURTHER GIVEN, pursuant to Rule 30(b) of the Federal Rules of Civil Procedure, that Plaintiff's deposition testimony may be recorded by audiotape and/or videotape, in addition to being recorded by the stenographic method by a court reporter who will participate in the deposition by remote video conference from another location.

NOTICE IS FURTHER GIVEN that the following technology may be utilized during this deposition: (1) Exhibit Capture (picture-in-picture) technology in which any exhibit reviewed by the deponent during the deposition can be captured visually; and (2) Exhibit Share or a similar paperless virtual display platform, which permits a paperless exhibit display process. Defendant, the deponent, and counsel are advised that in lieu of a paper set of exhibits, exhibits may be provided and displayed digitally to the deposition officer, deponent, and counsel. The exhibits will be compiled by the deposition officer for the purposes of exhibit stamping, and ultimate production of the final certified transcript.

Plaintiffs reserve the right to amend this notice, including to amend the location and format of the deposition.

17. “Contend” or “contended” mean to allege, believe, state, or in any way intend to maintain or argue for any factual, legal, or other matter.
18. “Contention” means any matter contended.
19. “Defenses” means and refers to any of floragunn’s defenses asserted in floragunn’s Answers in *floragunn I* (ECF No. 33) and *floragunn II* (ECF No. 71).
20. “Person” or “persons” mean and refer to natural persons, firms, associations, organizations, partnerships, businesses, trusts, limited liability companies, corporations, and public entities.
21. “Relate,” “relating,” or “related” mean directly or indirectly mentioning or describing, regarding, referring to, evidencing, setting forth, identifying, concerning, memorializing, created in connection with or as a result of, commenting on, embodying, evaluating, analyzing, tracking, reflecting, or constituting, in whole or in part, a stated subject matter.
22. “This litigation” or “this lawsuit” mean and refer to the case captioned *Elasticsearch, Inc. et al. v. floragunn GmbH*, Northern District of California Case No. 4:19-cv-05553-YGR, and the case captioned *Elasticsearch, Inc. et al. v. floragunn GmbH*, Northern District of California Case No. 4:20-cv-07514-YGR.
23. “*floragunn I*” means and refers to the case captioned *Elasticsearch, Inc. et al. v. floragunn GmbH*, Northern District of California Case No. 4:19-cv-05553-YGR.
24. “*floragunn II*” means and refers to the case captioned *Elasticsearch, Inc. et al. v. floragunn GmbH*, Northern District of California Case No. 4:20-cv-07514-YGR.
25. “codecentric AG” means and refers to codecentric AG and includes without limitation its predecessor and successor companies, its subsidiaries and parent companies, its retailers and affiliates, and any and all of its present and former officers, directors, representatives, agents, employees, attorneys, accountants, investigators, or anyone acting or purporting to act on behalf of any such person.
26. “BlueAngelHost” means and refers to BlueAngelHost PVT. LTD and/or BlueAngelHost LLC and includes without limitation their predecessor and successor companies, their subsidiaries and parent companies, their retailers and affiliates, and any and all of their present and former officers, directors, representatives, agents, employees, attorneys, accountants, investigators, or anyone acting or purporting to act on behalf of any such person.

RULE 30(b)(6) TOPICS

1. The authorship, development, design, creation, modification, and functionality of Search Guard code, including without limitation each portion of the Accused Code and any code or other sources reviewed or consulted to create the Accused Code.

2. The dates during which the Accused Code was in each Search Guard tier, version, product, and custom license, in any configuration.
3. Any and all efforts to ensure that the Accused Code did not infringe any Elastic copyright, including without limitation any code reviews or cleanroom procedures.
4. The integration of code developed by persons other than floragunn into products or services developed, designed, created, or modified by floragunn, and floragunn's policies, procedures, and practices thereon.
5. floragunn's policies, procedures, and practices relating to testing of, comments on, and documentation for source code and commits.
6. Testing of, comments on, and documentation for each Search Guard code file and commit that contained Accused Code.
7. The factual basis for any contention by you that:
 - (a) any Infringed Code is based on code not original to Elastic;
 - (b) any Accused Code or Infringed Code is constrained by its functionality as a security plugin for Elasticsearch or Kibana or "constrained by choices made by the programmers who wrote that code, by the need to function as a plugin to Elasticsearch or Kibana, or by other factors that limit the scope of copyright protection" (*floragunn I* Answer (ECF No. 33) at 3:13-16);
 - (c) any Accused Code or Infringed Code "concern standard, common, or stock programming practices" (*floragunn I* Answer (ECF No. 33) at 3:20-21) or are "tools of the trade" that are known to many in the developer community, and that draw on tropes common to computer programming" (floragunn's "Defenses" ¶ 16 in *floragunn I* (ECF No. 33) and *floragunn II* (ECF No. 71));
 - (d) any Infringed Code is "otherwise not entitled to copyright protection" (*floragunn I* Answer (ECF No. 33) at 3:19) or "otherwise not protectable by copyright" (floragunn's "Defenses" ¶ 17 in *floragunn I* (ECF No. 33) and *floragunn II* (ECF No. 71)); and
 - (e) any Infringed Code is licensed under the Apache Software License 2.0 or any other license that allowed floragunn to copy or create derivative works of the infringed Elastic code for commercial distribution.
8. Access to and/or downloads of source code for X-Pack, including without limitation any Infringed Code, by floragunn or any of its agents, employees, or contractors, and reverse engineering or decompiling of object code for X-Pack, including without limitation any object code corresponding to the Infringed Code, by floragunn or any of its agents, employees, or contractors.
9. floragunn's or any of floragunn's officers', employees', agents', or contractors' actions taken in response to Elastic making certain source code for X-Pack publicly available in April 2018.

1 Dated: February 14, 2021

2 DAVID R. EBERHART
3 JAMES K. ROTHSTEIN
4 DANIEL H. LEIGH
5 O'MELVENY & MYERS LLP

6 By: /s/ David R. Eberhart
David R. Eberhart

7 Attorneys for Plaintiffs
8 ELASTICSEARCH, INC. and
9 ELASTICSEARCH B.V.
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PROOF OF SERVICE

I, Daniel H. Leigh, declare: I am over the age of eighteen years and not a party to the within action or proceedings; my business address is: Two Embarcadero Center, 28th Floor, San Francisco, California 94111. On February 14, 2021, I caused to be served the within:

- **PLAINTIFFS ELASTICSEARCH, INC. AND ELASTICSEARCH B.V.'S NOTICE OF RULE 30(b)(6) DEPOSITION OF DEFENDANT FLORAGUNN GMBH; AND**
- **PROOF OF SERVICE**

on counsel for Defendant floragunn GmbH at the following email address: floragunn-service@kblfirm.com.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration, made in conformity with 28 U.S.C. § 1746, was executed at San Francisco, California on February 14, 2021.

/s/ Daniel H. Leigh

Daniel H. Leigh